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No. 90-231

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1989

STATE OF FLORIDA,

Petitioner,

v.

DUANE EUGENE OWENS,

Respondent.

On Petition For A Writ Of Certiorari
To The Supreme Court Of Florida

RESPONDENT'S BRIEF IN OPPOSITION

THEODORE S. BOORAS, ESQUIRE
Counsel of Record

Barnett Centre
625 North Flagler Drive
Suite 508
West Palm Beach, Florida 33401
(407) 832-0080

Counsel for Respondent

August 31, 1990

QUESTIONS PRESENTED

- I. Whether the established and accepted rule of law holding that when a suspect makes an equivocal request to remain silent police must either cease questioning or clarify the request, should be abandoned?
- II. Whether the Supreme Court should grant discretionary review because of a conflict between two Circuit Courts on an issue totally unrelated to the instant cause?

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REASONS THE PETITION SHOULD BE DENIED

1. The Florida Supreme Court correctly held that law enforcement's conduct in not honoring the Respondent's invocation of his right to remain silent violated the Fifth Amendment.

The Fifth Amendment requires police to immediately cease an interrogation once a suspect indicates in any manner, at any time during questioning that he wishes to remain silent. *Miranda v. Arizona*, 384 U.S. 436 (1966); reaffirmed in, *Michigan v. Mosley*, 423 U.S. 96 (1975). In the instant case, the Respondent's Fifth Amendment rights were grossly violated. At several points during the twenty-four hours of videotaped interrogations, the Respondent indicated that he wished to remain silent.

Appellant: Hey, between me and you, it seems to me that I shouldn't have to make a confession even though I - even if I did do it. You know what I mean?

Officer Woods: Why (A-4).

* * *

Officer McCoy: Okay. You don't want to talk about them?

Appellant: About which ones?

Officer McCoy: The one that you did that you didn't get caught for.

Appellant: No reason to, no.

Officer McCoy: Why?

Appellant: Why should I?

Officer McCoy: Because you want to, because you want to tell me about them.

Appellant: I don't know. (A-6).

* * *

Appellant: You're up here and I ain't talking about it.

Officer McCoy: Are you going to?

Appellant: Nope.

Officer McCoy: Why not? Why not?

Appellant: I don't know.

Officer McCoy: Is it because you are afraid or you don't want to remember or what? What's the reason? Give me a reason?

Appellant: I've got to figure it out myself, you know.

Officer McCoy: Okay. Let me ask you something. We'll get off that for awhile. Then we'll come back to it, O.K.? But we'll get off of it for awhile . . . (A-9).

* * *

Officer McCoy: What are we going to do with Georgiana Warden? What are we going to do about that?

Appellant: There ain't much to do about it, chief. (A-10).

* * *

Officer McCoy: Do you want to talk anymore?

Appellant: No, because you've got to get back over there and I really ain't got nothing to say anymore. (A-12).

* * *

Officer Lincoln: Were you looking at that particular house or just going through the neighborhood?

Appellant: I'd rather not talk about it.

Officer Woods: Why?

Officer Lincoln: Why? You don't have to tell me about the details if you don't want to, if you don't feel comfortable about that. Was it just a random thing? (A-14).

* * *

Officer Lincoln: Now, where did you put it?

Appellant: I don't want to talk about it.

Officer Lincoln: Don't you think its necessary to talk about it, Duane? Two months have gone by already. (A-30).

As detailed above, the Respondent several times indicated his desire to discontinue the interrogation; however, his invocation fell upon deaf ears as the police totally disregarded the Fifth Amendment's guaranteed protection. The above statements by the Respondent, must be viewed as an unequivocal invocation of his right to remain silent. In *U.S. v. Poole*, 794 F.2d 462 (9th Cir. 1986), the Court held that the interrogation should have ceased after the suspect said that he had, "Nothing to talk about." In *California v. Carey*, 227 Cal.Rptr. 813, Cal.App.3d 99 (2d Dist. 1986), cert. denied, 479 U.S. 1089 (1987), the Court held that the suspect's statement, "I ain't got nothing to say," was an unequivocal invocation of his right to remain silent. In *Christopher v. Florida*, 824 F.2d 836 (11th Cir. 1987), the Eleventh Circuit held that the statement "I got nothing else to say" was an unequivocal invocation of the accused's right to remain silent.

For, as the Court stated in *Mosley*, the underlying purpose of the right to cut off questioning is to give the suspect control over "the time at

which questioning occurs, the subjects discussed, and the duration of the interrogation", so as to "counteract the coercive pressures of the custodial setting." *Mosley*, 423 U.S. at 103-04, 96 S.Ct. at 326. Allowing a suspect to control the timing of an interrogation through his ability to "initiate" it serves this purpose; permitting the police to continue a custodial interrogation despite a request to stop in hope that the suspect will eventually ask a question does not. *Id.*, at note 22.

In the instant cause, although the Respondent repeatedly stated that he did not want to talk about the homicide, the police continued with their interrogations which directly violated the Fifth Amendment.

At one point when the Respondent stated that, "I ain't talking about it," Officer McCoy stated that, "We'll get off that for awhile, then we'll come back to it" (A-9). The practice utilized by this officer violated the *Mosley* rule which requires more than a switch of subjects after an invocation of the right to remain silent. *Mosley* mandates a total termination of the interrogation. *Michigan v. Mosley*, supra; *Martin v. Wainwright*, 770 F.2d 918, 924 (11th Cir. 1985), modified, 781 F.2d 185, cert. denied, 479 U.S. 909 (1986); and *Anderson v. Smith*, 751 F.2d 96, 103 (2d Cir. 1984).

Not only did the police violate the Respondent's Fifth Amendment rights by failing to "immediately cease" the interrogation, but they also violated the Fifth Amendment by questioning the Respondent as to why he wished to not talk about it.

Officer Lincoln: Were you looking at that particular house or just going through the neighborhood?

Appellant: I'd rather not talk about it.

Officer Woods: Why?

Officer Lincoln: Why? (A-14).

* * *

Officer Lincoln: Now, where did you put it?

Appellant: I don't want to talk about it.

Officer Lincoln: Don't you think its necessary to talk about it, Duane? Two months have gone by already. (A-30).

Inquiry as to why a suspect wishes to remain silent is an impermissible interrogation, not lawful clarification as argued by the State. *Christopher v. Florida*, supra; *U.S. v. Lopez-Diaz*, 630 F.2d 661, 665 (9th Cir. 1980); see also, *U.S. v. Johnson*, 812 F.2d 1329, 1331 (11th Cir. 1986); and, *Anderson v. Smith*, supra.

Once the Respondent invoked his right to remain silent, the police not only ignored his request, but they also sought to wear down his resistance over the many hours of continued interrogation. This Court has held that following an invocation of the right to remain silent, the interrogators may not attempt to wear down the suspect's resistance and make him change his mind. *Michigan v. Mosley*, supra at 105-06.

Even if the Respondent's statements were an equivocal indication of his desire to remain silent, the police could have only made a clarification. *Christopher v. Florida*, supra at 843-44; *Martin v. Wainwright*, supra at 924, (further questioning must be limited to clarifying the equivocal request); *Anderson v. Smith*, supra at 103; and, *U.S. v. Lopez-Diaz*, supra at 665. The *Christopher* court held:

The rule, however, permits 'clarification', not questions that, though clothed in the guise of 'clarification', are designed to, or operate to, delay, confuse, or burden the suspect in his assertion of his rights. Because such questions serve to keep the suspect talking, not to uphold his right to remain silent, they constitute unlawful 'interrogation', not permissible clarification. *Christopher*, at 342.

Moreover, after the Respondent did invoke his right to remain silent, the police, in contrast to the State's position, continued to interrogate him on the very homicide that was the subject of the interrogation at the time of the invocation. There can be no doubt that the police violated the Respondent's right to cut off questioning; therefore, as the Supreme Court of Florida correctly held, all statements taken during the unlawful continued interrogation were inadmissible.

2. The Florida Supreme Court's holding is totally unaffected by the conflict between the Ninth and Eleventh Circuits.

While *Martin v. Wainwright*, *supra*; and *U.S. v. Thierman*, 678 F.2d 1331 (9th Cir. 1982), may conflict as to a limited issue, their holdings on that issue do not control this cause. Both cases dealt with suspects requesting to continue the interrogation on the following day. The *Martin* Court held that the statement "Can't we wait until tomorrow" was an equivocal invocation of his right to cut off further questioning, 770 F.2d at 923-24. The *Thierman* Court held that the statement "Can we talk about it tomorrow" was a request to postpone the interrogation

on a single subject, not an outright refusal to answer any more questions. 678 F.2d at 1336.

In the instant cause, the Respondent stated that, "I'd rather not talk about it" and "I don't want to talk about it," meaning that he did not wish to be interrogated on the Slattery homicide. On the other hand, *Martin* and *Thierman* indicated a desire to discontinue their interrogations until the following day. There exist absolutely no comparison between the Respondent's statement and those of *Martin* and *Thierman*.

The State failed to point out that several years after the *Thierman* opinion, the Ninth Circuit held that an interrogation should have ceased after the suspect said that he had "Nothing to talk about." *U.S. v. Poole*, supra at 466. This ruling was later cited by the Eleventh Circuit when it held that a confession should have been suppressed after the accused stated "then I got nothing else to say." *Christopher v. Florida*, supra at 840.

The statements by *Christopher* and *Poole* are in line with those of the Respondent. The Florida Supreme Court's holding that the Respondent's confession was obtained in violation of the Fifth Amendment follows, not only the precedent set forth by this Court, but also that of the Ninth and Eleventh Circuits. *Michigan v. Mosley*, supra; *U.S. v. Poole*, supra; and *Christopher v. Florida*, supra. On the other hand, the Florida Supreme Court's holding is totally unaffected by the limited conflict between *Martin v. Wainwright*, supra, and *U.S. v. Thierman*, supra.

This Court should not allow the State to use the limited conflict between *Martin* and *Thierman* as a vehicle

to obtain review. Although a legal debate between the two would be of interest, their holdings do not control the instant cause; thus, certiorari should be denied.

CONCLUSION

For the reasons set forth herein, the Respondent, DUANE EUGENE OWENS, respectfully prays this Honorable Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

THEODORE S. BOORAS, Esquire
Barnett Centre
625 North Flagler Drive
Suite 508
West Palm Beach, Florida 33401
(407) 832-0080
Counsel for Respondent

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A-1

The following are pages 134-37 of the supplemental record on appeal before the Florida Supreme Court.

Q You and me make some team fighting. Two bulls, right?

A Yeah.

The problem is I am just as stubborn as you are when you make up your mind.

Q I know. I know.

A Being if I did do that, I probably wouldn't confess anyway.

Q Why?

A Being if I did do it, why I wouldn't confess?

Q Mm-hmm.

A Because you just don't confess to shit like that, you know.

OFFICER WOODS: Why?

BY OFFICER McCOY:

Q Why? Tell me - tell me - tell me why.

The real reason. Tell me why you just don't confess to shit like that, okay.

Tell me why.

The real reason, Duane.

I don't want to hear about sentencing no more. I don't want to hear about plea bargains no more. I don't want to hear that, okay.

You may have a hard time with it because you win your mission, you win this, and you win your bells and you win this, okay.

I am not winning because I am the bull and you are the bull and we fight to the death, okay.

I'm not the winner. I am not the winner.

You are the winner. You are the winner, okay. You win. I don't win nothing, okay. You win, okay. Because you are free from it, pal, okay. Because you have a chance not to do it again, okay. Because there is kids out there that don't want to have to go through that again.

And you know why they don't? You know why?

Because you decided they are not going to do that no more. They are not going to go through that no more, at least not from you.

You decided that.

That was your decision, okay.

So, you win. You get the ultimate decision. You make the ultimate choice because you decided to stop.

Not because I stopped you. Not because I am a stronger bull than you, okay. Or maybe that I outlasted you or that - or that - or that you lost to me. You ain't losing to me, okay.

Yeah, we are both bulls. Yeah, we fuck with each other's heads a little bit over the last couple of days. Sure we did, okay.

You are the ultimate winner because you are free from it, man, okay.

And you made the decision that it's not going to happen again. That you can stop it.

Okay, you are the winner there, man, not me, okay.

The people are the winner, okay. that's who the winner is, okay.

But you made them the winners, not me, okay. Not me.

A Seems to me that -

OFFICER McCOY: I'm sorry, Mark, did you get with somebody to get us chow?

OFFICER WOODS: Oh, you want to eat? I was going to ask. What do you want?

THE DEFENDANT: It doesn't matter to me.

OFFICER McCOY: He says anything. Could you do that?

OFFICER WOODS: Sure.

OFFICER McCOY: Because we should - I am starved. He is starved.

As long as it's not fish.

(Inaudible.)

(Whereupon, Officer Woods left the room.)

THE DEFENDANT: It seems to me - you know, I am not guilty, but it seems to me that if -

OFFICER WOODS: Excuse me. You got a phone call.

OFFICER McCOY: Probably my wife.

Keep your thought, okay. Keep your thought. Don't let it run away.

(Whereupon, Officer McCoy left the room.)

(Whereupon, Officer Woods enters the room.)

THE DEFENDANT: Hey, between me and you, it seems to me that I shouldn't have to make a confession even though I - even if I did do it. You know what I mean?

OFFICER WOODS: You shouldn't have to?

THE DEFENDANT: No.

OFFICER WOODS; Why?

THE DEFENDANT: Because if he had it stuck in his heart that I did it so bad, then he should have to prove that I did it and he shouldn't be here asking for a confession because he should have enough proof against me to not even worry about it.

He should already have a confession of his

* * *

The following are pages 362-365 of the supplemental record on appeal before the Florida Supreme Court.

never going to get out.

Q Well, maybe not.

A There ain't no maybe's. I know. He ain't never going to get out if he's charged with that kind of stuff.

Q Well, whatever. Whatever. Okay?

But as it stands right now, without anything, okay, without anything for me to go on, I mean as far as, you know, that person's point of view or his - or what happened or black out or this or that or the other thing or self-defense or this or that, whatever.

The only alternative will be a premeditated murder. Maybe first-degree murder, yeah. That would be it.

And we get all the tests back and everything like that, I got nothing else to go with, yeah. That's going to be the charge. We'll have to deal with that later on.

Can you offer me anything?

A Well, no, not on that case, no.

Q What other case?

A Well, the other ones that I'm already here for, you know.

Q Uh-huh. I know about that.

A I admitted to them because I knew I did them.

Q Uh-huh.

Okay. and those were the only other ones you ever did in Boca Raton?

A No. I did a couple more of them, but mums the word on them.

Q Maybe for now.

A As a matter of fact, I don't think I ever did. I think that's about it.

Q No, they weren't.

A Huh?

Q I says they weren't, and I know that and you know that.

A Oh, yeah. I know it, too. Now, I remember.

Q The ones -

A Huh?

Q The ones I asked you about, you mean?

A Yeah. Oh, I didn't do them, you know, about them other ones, but I know the ones I did do that didn't get caught on them.

Q Okay. You don't want to talk about them?

A About which one?

Q The ones that you did that you didn't get caught for.

A No reason to, no.

Q Why?

A Why should I?

Q Because you want to, because you want to tell me about them. I don't know.

A No. They - they ain't such importance anyway.

Q You know why some - I know why some of them you don't want to talk to me about.

A Why?

Q Because a couple people got hurt a little bit. I know that.

A Oh, yeah. those are them ones that you was talking to me about the other day.

Q Uh-huh. Uh-huh, yeah.

That's probably why you don't want to tell me about them.

Okay. It's no big deal. They're alive.

Okay. They got a pop in the noggin or maybe or whatever, a stitch or two, but they're alive.

Okay. And that's probably why you don't want to tell me about them. Okay.

Because you talked to me about, before, that you're not a violent person.

Well, I know you got a temper. Obviously, you were in a fight up there or something like that.

So, yeah, you do have a little bit of a temper.

We all do. Nobody is completely non-violent, and that's why you don't want to tell me about them.

But I would be lying to you if I didn't think you were the guy that did it. I think - I think - I think you know that.

Or what it says to you, what it should say to you, if you have any conscience whatsoever, okay, or you're thinking about it, unless you were to say to me right here and now that you don't give a shit about hurting anybody, which I wouldn't - you know, I find that hard to believe that you could say that to me. Okay.

Uh, you got to realize that it's wrong to hurt people and you got to realize that because you started hurting people, okay, and you couldn't stop hurting people and maybe you didn't kill or maybe the other people didn't die before when you hurt them, okay, you got to realize somewhere in your own mind, okay, that it escalated to the point where now someone is dead because of that violence. Okay.

And yeah, that says to me why you don't want me to - why you don't want to talk about those other cases, okay, that I talked to you about, because - let

* * *

The following is page 880 of the supplemental record on appeal before the Florida Supreme Court.

about that later.

Uh, okay. That was the one lie you told me.

What was the other one?

THE DEFENDANT: Same lie that I told you I was going to talk to you about when you came up here. You're up here and I ain't talking about it.

OFFICER McCOY: Are you going to?

THE DEFENDANT: Nope.

OFFICER McCOY: Why not? Why not?

THE DEFENDANT: I don't know.

OFFICER McCOY: Is it because you're afraid or you don't want to remember or what? What's the reason? Give me a reason?

THE DEFENDANT: I've got to figure it out myself, you know.

OFFICER McCOY: Okay. Let me ask you something. We'll get off of that for a while. Then we'll come back to it, okay? But we'll get off of it for a while. But now your brother's got to go and he wants to just say good-bye to you before he goes. Okay?

Uh, remember we talked about the flashing when you flashed a little girl over at FAU?

Back, uh, the night Mary Lee Manley was hurt?

* * *

The following are pages 921-922 of the supplemental record on appeal before the Florida Supreme Court.

Like we had uniforms like this with buttons and stuff, regular pants and a zipper; blue uniform.

What I did was I - you know, I like to look sharp, man. So, I shined my shoes every day. Why else look like a bum. They had their pants legs rolled up and shit.

Q Okay.

A I don't know, you know. I wanted to look halfway decent.

Q So, did you have those sneakers from Ingrahm Medical Center until Dover Street and - when you parted your company?

A Yeah. I never really wore them that much because they were - they were too small.

Q Why would you buy shoes that were to small?

A See, at the time when I bought them, they felt fine. But then I started playing football and shit and, you know, and didn't want to take any chance on ruining them.

Q Do you wear heavy socks?

A Up there I did; yeah. I wore my green Armies.

Q What - what are we going to do with Georgiana Warden? What are we going to do about that?

A There ain't much to do about it, chief.

Q Okay. Mark's got a few questions for you about the camera shit you were talking about. You want to talk to him for a couple minutes?

A Yeah. Yeah. That'd be fine.

Q If you do remember anything else, I'll be around.

A All right.

As a matter of fact, maybe if you think about it when you walk by the coffee machine -

Q Oh, yeah. Yeah. I've done that before.

A Does that beeper work or what? Here. I noticed that before.

Q Yeah, here -

A Oh.

Q If they want me, they'll page me. I'll be back.

A (Witness nodded his head.)

(Whereupon, Officer McCoy left the room.)

(Whereupon, Officers Woods enters the room.)

THE DEFENDANT: What are you looking for?

OFFICER WOODS: The ashtray. What did you do with it?

THE DEFENDANT: Oh, uh, I think they hauled it out of here when they took the cigarettes and all the cups and shit.

* * *

The following are pages 965-966 of the supplemental record on appeal before the Florida Supreme Court.

you know, and everything because, you know, the case is being solved or whatever.

OFFICER McCOY: No. The case is solved.

THE DEFENDANT: Well, you know, it's still in - you know, still going. Let's just say -

OFFICER McCOY: Sweeping up the details.

THE DEFENDANT: Well, like it's still in process. It's -

OFFICER McCOY: Yeah.

THE DEFENDANT: You know, once it's over with and everything then you have nothing to work for anymore.

OFFICER McCOY: Who, me?

THE DEFENDANT: I mean on this case.

OFFICER McCOY: Well -

THE DEFENDANT: So therefore, you know, maybe down the road -

OFFICER McCOY: I might.

THE DEFENDANT: That's just - that's history.

OFFICER McCOY: I might. Because there are going to be other people talking to me about you, seeing what I think. Michigan's been talking to me and, you know, Lansing's been talking to me. A few other people. You know, so they'll always be something there. So, we may be seeing each other then, too, just to talk.

Do you want to talk anymore?

THE DEFENDANT: No, because you've got to get back over there and I really ain't got nothing to say anymore, you know. And all we've been doing is beating around the bush, you know.

What time is it anyway?

OFFICER McCOY: 4:00 o'clock, 4:15. I'll get you over there for chow. Why don't you hang tight.

(Whereupon, Officer McCoy left the room.)

(Whereupon, the foregoing-videotaped interview was concluded.)

The following are pages 1076-1096 of the supplemental record on appeal before the Florida Supreme Court.

* * *

looks like.

OFFICER LINCOLN: Yeah, you do.

Duane, this is you. This stuff proves it's you.

THE DEFENDANT: Yeah, it looks identical to me.

OFFICER LINCOLN: Sure, it is.

Tell me about it for you, Duane.

I think you need to.

I know you want to.

Like I say, I think I understand certain things about you.

This has - this has gone on for two months now.

In a lot of ways, it's a competition.

It's something where you match your wits like the little poem you just recited.

I give you all the credit in the world.

You are sharp.

See, but this stuff here says there was at least one mistake that you made.

Whether or not you made it intentionally, I am not convinced.

Yeah, you're right, this is you.

When did you first see her?

Now is the time, Duane.

We can't have stuff on this thing.

OFFICER WOODS: It's good enough.

I know what you're thinking.

THE DEFENDANT: That's it, man.

OFFICER WOODS: You're taking a look at it and you're checking it out.

THE DEFENDANT: Yeah.

OFFICER WOODS: And that's it. That's the bottom line.

OFFICER LINCOLN: Satisfy yourself right now.

There's a few things -

OFFICER WOODS: Yeah.

OFFICER LINCOLN: - that I have to know, Duane.

A couple pieces of the puzzle don't fit.

How did it come down?

Were you looking at that particular house or just going through the neighborhood?

THE DEFENDANT: I'd rather not talk about it.

OFFICER WOODS: Why?

OFFICER LINCOLN: Why?

You don't have to tell me about the details if you don't want to if you don't feel comfortable about that.

Was it just a random thing?

Or did you have this house picked out?

That's what I'm most curious about?

Things happen, Duane.

We can't change them once they're done.

THE DEFENDANT: No.

OFFICER LINCOLN: But you can sure make it easier on two parents that need to know.

OFFICER WOODS: And a whole town full of babysitters that are afraid to go outside.

That's how the kids make all their money in the summer.

OFFICER LINCOLN: Had you ever been to that house before?

THE DEFENDANT: That was a big scene over there.

OFFICER LINCOLN: You're not kidding.

OFFICER WOODS: Of course.

THE DEFENDANT: Made the papers and everything.

OFFICER LINCOLN: Nationwide.

THE DEFENDANT: A lot of people's mad about it too.

OFFICER LINCOLN: I don't think it's mad so much, Duane, as -

OFFICER WOODS: Scared.

OFFICER LINCOLN: Scared of something they can't control.

You know how you are in a situation you can't control, sometimes you are frightened.

I know I am.

That's what those people feel.

See, and they are going to have to know that they have no reason to be scared anymore.

Had you been to that house before, Duane?

THE DEFENDANT: That tells you right there.

OFFICER LINCOLN: I'll show you again.

THE DEFENDANT: That answers my question.

OFFICER LINCOLN: Before that night?

I know you were there that night.

Had you ever been there before?

It had to happen.

So you got to accept it.

OFFICER WOODS: Yeah.

It's all over.

And you were good too.

How much time did you spend in the house and look how little you left; one footprint and all the other stuff in the blood.

You wiped everything down real good.

We didn't get one latent, did we?

Was there any (indicating)?

OFFICER LINCOLN: No fingers.

OFFICER WOODS: Plenty of smudges, but that's from wiping stuff.

You didn't take your socks off.

OFFICER LINCOLN: You were outside for quite a while, I think.

OFFICER WOODS: Yeah.

OFFICER LINCOLN: How long?

You scouted it out good.

I know you did.

I saw your footprints - your sneaker prints out underneath the windowsill there in the front of the house.

I know you were ducked down there looking in.

How long did it take before you went in?

THE DEFENDANT: What sneaker prints?

OFFICER LINCOLN: Pictures, photographs.

See, we don't have any sneakers to compare them to, Duane.

The size is right. The size is your shoe size.

How long were you outside?

It's like you said, we got it right here. You're right. We got it.

THE DEFENDANT: What I don't understand is this right here (indicating).

OFFICER LINCOLN: I think we can get to that once we start talking.

I can explain that to you and you will remember.

Was that your first time at the house, Duane?

Talk to me.

I know you want to.

And you can see that this isn't bullshit. This is evidence. You are confronted.

Now, tell me.

OFFICER WOODS: Remember how the other night after when you told me you did that one on Fourth Avenue and you told me you faked me out.

I was the one that went to the hair salon and asked the people if Duane Owen got a haircut the next day.

And you fooled me and you got me good.

OFFICER LINCOLN: The time for fooling and everything else is over with.

OFFICER WOODS: But then you told me how you were slick and how you went about it.

You were good.

OFFICER LINCOLN: Sure.

OFFICER WOODS: I got to tell you.

And this one is even tougher, because you didn't touch anything with your hands.

Did you steal anything out of the house?

OFFICER LINCOLN: I'm going to tell you and I'm going to say it just one more time, because I'm getting tired of telling you how good you are.

My guys - we had about eight guys working on this case.

A lot of hours. Whole lot of hours.

And it all comes down to this two months later. Some footprints that you put inside definitely excludes all others. In the blood at the crime scene and all the other circumstantial stuff.

Which, that's all it is, circumstantial, I grant you.

The statements you've made. The accountability for your time and all the other things, but that coupled with this locks you in.

You're the man.

You know you're the man.

You wanted somebody to tell it to you, prove it to you and you got it.

Now, I think you've got the responsibility to be a man and live up to your end of the thing.

See, we've done our thing. We've gone as far as we can.

We're professionals.

But I have a couple questions still. I'm curious. That's why I'm asking you the questions.

And you can straighten them out for me.

Had you ever been to that house before?

Some of the guys think that you had and some don't.

THE DEFENDANT: Why do they think I had?

OFFICER LINCOLN: It's just their matter of choice.

Personally I don't think you had.

Was I right?

THE DEFENDANT: Why did you guys think there were two people in the house, or was that just to throw the papers off and the people?

OFFICER LINCOLN: You got to try to keep the press off guard because they can really damage your case sometimes too.

I saw it as one person all along.

You do your things alone.

You don't bring other people in. I know that.

That's your style.

THE DEFENDANT: Get snitched out, man, if you bring anybody else.

OFFICER LINCOLN: Sure.

OFFICER WOODS: And you don't tell anybody else either, sitting around bragging.

Some of the guys thought that whoever it was might have talked to her on the beach, because she did go to the beach.

It might have been somebody who worked around the beach; stuff like that.

Had you ever talked to her on the beach and she told you where she was or where she was babysitting or anything like that? Or were you just kind of going through the neighborhood and checking the places out and scoping around?

You had just gotten kicked out of the house. You needed some change, right?

OFFICER LINCOLN: How long did it take you?

THE DEFENDANT: No, I had plenty of money.

OFFICER WOODS: Yeah?

OFFICER LINCOLN: How long did it take you to get in, Duane?

OFFICER WOODS: You mean you did a lot of checking out before you went in, right?

A lot of looking around?

OFFICER LINCOLN: Duane, be a man about it now.

This is evidence.

The three of us are sitting here.

That's true.

This is - this is not a dream. This is not a hypothesis. This is something that's happened.

And the fact that you did this crime is something that happened.

It happened.

OFFICER WOODS: You can't change that.

OFFICER LINCOLN: But I do think you do have a responsibility too that you can recognize to try to make things right for the people in Delray.

That's a hell of a thing to do through life wondering. And I think you're a bigger man than that.

By the fact you didn't harm those children, that tells me something about you, Duane.

THE DEFENDANT: She was a children. She was only fourteen.

OFFICER WOODS: She didn't look fourteen, did she?

THE DEFENDANT: Not in the paper, no.

OFFICER LINCOLN: Don't talk about the paper, Duane.

Let's talk about that night.

See, that's reality.

See, you can't dance around reality forever.

I know you've been wanting to talk about it.

I know you have.

I know this isn't easy for you to accept.

It's a mistake you made.

I don't think it's something you intended - intentionally did, but it happened.

I have given you something here, Duane. I think it's time you gave me something.

Because fair is fair and right is right.

How long did it take you to get into that house?

Was it something you took your time at?

Give me something, Duane.

I've given you something. Evidence.

This is stuff you recognize, because you are not a dummy.

See, I can't run bluffs by you. I know that.

That's why I came with evidence.

That's why we haven't talked to you directly until now.

But the time has come.

THE DEFENDANT: Yeah.

OFFICER LINCOLN: We're not going to keep running around this thing here.

Now, how long did it take you to get into the house?

THE DEFENDANT: You know what's so strange about this whole thing, you know, is that, you know, like this here could have been, you know, taken right off this picture here. Right off the piece of paper that I made up today, you know.

OFFICER WOODS: Duane, that's the kind of cards I used when I was in crime scene for lifting latent fingerprints, Duane.

OFFICER LINCOLN: This is evidence, Duane.

OFFICER WOODS: I can't see you bringing this up here either, Rick.

OFFICER LINCOLN: I wanted him to see it.

OFFICER WOODS: You could have taken a picture of it or something.

OFFICER LINCOLN: Hey, this is it.

This is the way that it comes.

I think it's time you gave this stuff up, Duane.

This is the way that it is.

This is not somehow gee, maybe Duane Owen did it.

Duane Owen did it!

OFFICER WOODS: It ain't like there was an eyewitness to it or nothing, but that's just as good, you know.

OFFICER LINCOLN: I've been clean with you and I showed you what I have.

THE DEFENDANT: Mm-hmm.

OFFICER LINCOLN: I think it's time you gave me a little bit back.

Did you know Mr. and Mrs. Helm (phonetic) who owned the house there?

Had you ever seen them before?

OFFICER WOODS: Had you?

The game is over, Duane.

You know there's no more - there's no more nip and tuck and chase and hunting and fishing and checking us

out. Because you did. And we came through. We found something. Something solid.

It's no more game.

What are you thinking about?

A lot of stuff bouncing around in there.

OFFICER LINCOLN: Had you ever been there before, Duane?

THE DEFENDANT: I was just trying to think of -

OFFICER WOODS: Think of a way out?

THE DEFENDANT: No. There ain't no way out.

OFFICER WOODS: There ain't no way out.

Come on. Talk. Don't sit there and look at the ceiling.

THE DEFENDANT: Hmm, I was just trying to think about the situation, you know. How I was just talking about one.

I'm kind of mixed up right now.

OFFICER WOODS: Yeah.

What do you mean? You're trying to get your thoughts together on how this one went down?

OFFICER LINCOLN: The situation, Duane, is such.

I mean this -

OFFICER WOODS: Trying to remember -

OFFICER LINCOLN: This is here. We're sitting here. The evidence is here and the three of us are here.

THE DEFENDANT: Mm-hmm.

OFFICER LINCOLN: I know all about the case.

I was there that night.

You know all about the case.

I'm just trying to share some thoughts with you so you can set me straight on some of the things that happened there.

You're an intelligent guy. So I imagine you have this natural curiosity too.

Put yourself in my place and I think you would want to know some of the same things that you are not clear of.

OFFICER WOODS: You would make a hell of a cop.

THE DEFENDANT: Would have anyway, huh?

OFFICER WOODS: Sure would.

Do you want him to say anything specific?

OFFICER LINCOLN: Did you know Mr. and Mrs. Helm, Duane, the people who owned the house?

THE DEFENDANT: No.

OFFICER LINCOLN: So you never been there before?

See, that's what I thought.

Now, was I right?

THE DEFENDANT: No, I never been there before.

OFFICER LINCOLN: How long were you outside that night?

Even better than that, where did you move your bicycle to?

I still can't quite figure that out.

THE DEFENDANT: How do you know it was my bicycle?

OFFICER LINCOLN: You tell me it wasn't your bicycle, huh.

THE DEFENDANT: It wasn't.

OFFICER LINCOLN: Oh, no?

THE DEFENDANT: Huh?

OFFICER LINCOLN: You borrowed one? Is that what you are telling me?

THE DEFENDANT: It wasn't my bicycle, yeah.

OFFICER WOODS: Was it one you had stolen?

THE DEFENDANT: Why, couldn't the lady identify it?

OFFICER LINCOLN: You know ladies.

THE DEFENDANT: Couple old ladies?

OFFICER LINCOLN: Didn't pay a whole lot of time and attention.

THE DEFENDANT: They probably should have.

OFFICER WOODS: They don't know about bicycles anyway if they had.

THE DEFENDANT: If I drove home and some bicycle was in my yard, I probably would have picked it up and took it inside.

OFFICER WOODS: What's an old lady need with a bicycle?

OFFICER LINCOLN: I guess when you live by the beach you don't need bicycles that much.

THE DEFENDANT: Huh?

OFFICER LINCOLN: I guess when you live by the beach you don't need bicycles that much.

THE DEFENDANT: You got tire impressions and stuff like that?

OFFICER LINCOLN: Did I show you tire impressions?

THE DEFENDANT: No. Then you ain't got them.

OFFICER WOODS: What would it prove anyway?

THE DEFENDANT: You could match the bike to the person who owned it.

OFFICER LINCOLN: Duane, you're dancing now.

You're waltzing around.

I don't need bicycles.

THE DEFENDANT: I know.

OFFICER LINCOLN: This is what I need (indicating).

THE DEFENDANT: I thought maybe you found some somewhere around there.

OFFICER LINCOLN: I wish I had.

What did you do with it?

You must have put it someplace?

Where?

Over in that field across from the house?

A lot of woods over in there.

That's where I'd probably put it.

Is that where you put it?

OFFICER WOODS: He don't have the bicycle, Duane. He's just trying to fill in the blanks, you know.

THE DEFENDANT: Yeah.

OFFICER LINCOLN: Duane knows.

OFFICER WOODS: Tell him.

OFFICER LINCOLN: There's only two places it could have - could have been, Duane, after you moved it. Either behind the house or in front of the house.

Which was it?

OFFICER WOODS: Well?

THE DEFENDANT: How do you know I even had a bike?

You don't even know that.

OFFICER LINCOLN: You tell me you didn't have a bicycle.

See, you won't lie, Duane.

I know you won't lie when you are confronted with the truth.

Now, are you going to tell me you didn't have a bicycle?

I know that much about you now.

You play by the rules. Those rules are important.

We all need rules.

Now, did you have a bicycle?

Of course, you did.

Now, where did you put it?

THE DEFENDANT: I don't want to talk about it.

OFFICER LINCOLN: Don't you think it's necessary to talk about it, Duane?

Two months have gone by already, Duane.

That's a long time. It's a long time for people to work. It's a long time for you to hold it within yourself. It's a long time for people to wonder.

OFFICER WOODS: And be scared.

OFFICER LINCOLN: Don't you think it's time to put all that to rest?

I think you do.

OFFICER WOODS: It's all over. You might as well.

You can't get around all this stuff.

You got no out.

OFFICER LINCOLN: This isn't going to disappear.

OFFICER WOODS: Do you like the guys from Boca more than you like us?

I told you you shouldn't have bought him that Whopper.

OFFICER LINCOLN: Yeah.

THE DEFENDANT: No, it's just circumstances surrounding it, you know.

OFFICER WOODS: It doesn't make any difference, Duane.

I know what you're thinking.

OFFICER LINCOLN: No.

OFFICER WOODS: And it really doesn't matter.

It's no different. And it's all here anyway, right.

OFFICER LINCOLN: I won't make you tell me something you're not comfortable in talking about, Duane.

But I do want to know some of the things that shouldn't hurt you that much to talk about.

What you did with the bicycle. How long you were outside the house. Those kinds of things.

I know what you're reluctant to talk about and I won't press you on that.

THE DEFENDANT: I don't see what them kind of things got to do with it anyway.

OFFICER LINCOLN: It's all part of the crime Duane.
